

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a Nevada state prisoner. By order filed January 26, 2011, the Court entered an order granting respondents' motion to dismiss and finding Ground 3 of the petition to be unexhausted. (ECF No. 12). Petitioner was given the option of requesting a stay and abeyance to exhaust Ground 3 in state court, or to inform this Court that he wishes to formally and forever abandon unexhausted Ground 3. (*Id.*).

On February 18, 2011, petitioner filed a “motion to stay and abey,” which appears to be a request for an extension of time to inform the Court of his option. (ECF No. 13). To the extent that petitioner requested an extension, the motion is granted.

1 On May 23, 2011, petitioner filed a “motion to reopen case/request to dismiss Ground 3 with
2 prejudice.” (ECF No. 14). First, this action was never closed, therefore it cannot be reopened.
3 Second, the motion is better construed as a notice of abandonment, as petitioner states: “Petitioner
4 requests to dismiss Ground 3 of his petition for writ of habeas corpus, based on the fact that Ground
5 3 has been and is unexhausted.” (ECF No. 14, at p. 1). Petitioner continues with: “Petitioner
6 respectfully requests that petitioner be allowed to proceed upon Ground 1 and Ground 2.” (*Id.*). The
7 Court grants petitioner’s motion to voluntarily dismiss Ground 3 of the petition and proceed on
8 Grounds 1 and 2. Respondents shall now file their answer to the remaining grounds for relief.

9 **IT IS THEREFORE ORDERED** that petitioner’s motion at ECF No. 13, construed as a
10 motion for an extension of time, is **GRANTED**.

11 **IT IS FURTHER ORDERED** that petitioner’s motion at ECF No. 14, to dismiss Ground 3
12 of the petition and proceed on Grounds 1 and 2, is **GRANTED**.

13 **IT IS FURTHER ORDERED** that respondents shall have **thirty (30) days** from the date of
14 entry of this order to file their answer the remaining grounds of the petition.

15 **IT IS FURTHER ORDERED** that petitioner shall have **thirty (30) days** after the filing of
16 the answer to file a reply.

17 Dated this 22nd day of June, 2011.

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20 UNITED STATES DISTRICT JUDGE
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